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16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA -- SAN FRANCISCO DIVISION**

18 MARCIANO PLATA, et al.,

19 Plaintiffs,

20 v.

21 ARNOLD SCHWARZENEGGER, et al.,

22 Defendants.

No. C01-1351 TEH

CLASS ACTION

**DEFENDANTS' REPORT IN RESPONSE
TO THE COURT'S FEBRUARY 15, 2007
ORDER**

INTRODUCTION AND BACKGROUND

The Governor and the Legislature recently approved a historic, bipartisan plan to reduce prison overcrowding, increase rehabilitation programs, and provide more beds for inmate medical care. Assembly Bill 900 (AB 900) creates a comprehensive plan to immediately relieve overcrowding by providing for additional out-of-state inmate transfers (CDCR anticipates transferring 8,000 inmates by March 2009), as well as the construction of 40,000 prison beds including much-needed medical beds, in addition to approximately 13,000 new jail beds. AB 900 also provides for new rehabilitation programs and re-entry facilities to improve inmate re-entry into California communities, thereby reducing recidivism, easing prison overcrowding, and ensuring public safety. AB 900's comprehensive plan and CDCR's parole reforms effectively address prison overcrowding without encouraging or causing the early release of dangerous criminals.

The Governor also recognizes that out-of-state transfers and expanding prison capacity are not enough. California's prisons must be expertly managed and the prison reforms must be implemented immediately. Accordingly, the Governor has established two strike teams -- one for construction and another for rehabilitation -- to expedite construction and to create and improve programs for rehabilitation, substance abuse, education, and job training. And CDCR is immediately implementing administrative parole changes that reward successful rehabilitation, which will further reduce overcrowding.

This comprehensive, historic plan for prison reform will directly assist the Receiver in his efforts to provide constitutional medical care. AB 900 provides for medical beds needed by the Receiver, who recently submitted his Plan of Action for providing constitutional medical care. Defendants will continue to support the Receiver's efforts. The Receiver's report on prison overcrowding also suggested that he should be permitted to expand the scope of his authority, such as assuming direct oversight over CDCR's correctional officer hiring and AB 900 implementation. However, Defendants respectfully contend that while cooperation and coordination between the Receiver's Office and the State must continue, there is no need for the Receiver to expand the scope of his authority over CDCR. The Receiver should work to

1 implement his Plan of Action, and the State should work to implement its own bipartisan prison
2 reforms and parole reforms.

3 Within this context, the Court now considers Plaintiffs' motion for a referral to a three-
4 judge panel to limit California's prison population. It is undisputed that California's prisons are
5 overcrowded, and that the overcrowding has created emergency conditions in at least 29
6 California prisons. But as this response shows, the State and the Receiver are already
7 aggressively addressing the medical care and overcrowding issues. The underlying question is
8 whether it is necessary and appropriate – applying the limited criteria of the Prison Litigation
9 Reform Act of 1995 (PLRA) – to refer this matter to a federal three-judge panel at this time. The
10 answer is no, because the criteria for referral have not been met.

11 **Legal Standard.**

12 As this Court recognized, the relevant statutory criteria are whether (i) the court has
13 previously entered an order for less intrusive relief that has failed to remedy the deprivation of the
14 Federal right sought to be remedied through the prison release order; and (ii) the defendant has
15 had a reasonable amount of time to comply with the previous court orders. (Feb. 15, 2007 Order
16 at 2; 18 U.S.C. § 3626(a)(3)(A).) The broader statutory scheme requires that any prospective
17 relief must be narrowly drawn, shall extend no further than necessary to correct the specific
18 constitutional violation involved, and must be the least intrusive means necessary to correct the
19 constitutional violation. 18 U.S.C. § 3626(a)(1). In addition, substantial weight must be given to
20 any adverse impact on public safety. *Id.*

21 This Court determined that the first element of the statutory criteria was satisfied: that the
22 Court had previously entered an order for less intrusive relief, referencing this Court's June 2002
23 and September 2004 Orders. (Feb. 15, 2007 Order at 2.) This Court noted, however, that the
24 second requirement – that Defendant has had a reasonable amount of time to comply with the
25 previous court orders – speaks to the issue of timing. (*Id.* at 3.) This Court said that it must
26 assess when a reasonable period of time has passed such that it is “persuaded that the remedies it
27 has ordered will not be achieved.” (*Id.*) This Court added that “this issue must be considered in
28 the unique context of the recently initiated Receivership which – in lieu of Defendants – is

1 attempting to remedy the violations.” (*Id.*)

2 The State contends that referral to a three-judge panel is premature, because insufficient
3 time has passed for this Court to be persuaded that the Receiver’s efforts will fail. The Receiver,
4 by his own statements, contends that he has made great progress in the past year. (*See*
5 www.cprinc.org/faq.htm, at 4-6, reporting that under the Receiver’s management, the salary crisis
6 has been addressed, the pharmacy crisis has been addressed, nurse staffing has been restructured,
7 the contracting crisis is under control, the broken discipline system is under repair, and medical
8 equipment and supplies have been delivered.) In addition, the Receiver just issued an aggressive
9 Plan of Action for moving forward to ensure a constitutional level of medical care. As the
10 Receiver said in his Plan of Action, “failure is not an option.” The Governor and his
11 administration agree, and that is why the Governor called a special session of the Legislature,
12 issued an Emergency Proclamation, initiated the transfer of inmates out of state, and pushed for
13 passage of AB 900.

14 Plaintiffs nevertheless contend that although the Receiver has not yet failed, it is already
15 clear that the Receiver *will fail*. (Pls.’ Notice of Mot. and Mot. to Convene Three Judge Panel,
16 17:4-7.) But Plaintiffs support their contention by citing to findings made *before* the Receiver
17 was appointed, and Plaintiffs do not give sufficient credit to the historic, groundbreaking efforts
18 now being made by the State and the Receiver. For example, Plaintiffs cite the prior finding that
19 “on average, an inmate in one of California’s prisons needlessly dies every six to seven days due
20 to constitutional deficiencies in the CDCR’s medical delivery system.” (*Id.* at 10:4-5, referencing
21 this Court’s October 3, 2005 Findings of Fact and Conclusions of Law Re Appointment of
22 Receiver at 1.) But this finding was made by the Court before the Receiver was appointed and
23 before the Receiver had an opportunity to make changes to the prison medical delivery system.
24 Since that time, the Receiver has reported great progress in improving prison medical care. (*See*
25 www.cprinc.org/faq.htm at 4-6.) Circumstances are changing rapidly, and reliance on outdated
26 information is inappropriate.

27 The PLRA requires a nexus between the relief sought and the federal right at issue, and it
28 also reiterates the limits of federal authority to order prospective relief. For example, a three-

1 judge panel cannot issue a prison release order unless it finds, by clear and convincing evidence,
2 that (i) crowding is the *primary cause* of the constitutional violation at issue, and (ii) *no other*
3 *relief* will remedy the violation. 18 U.S.C. § 3626(a)(3)(E).

4 **The Receiver's Report on Overcrowding.**

5 This Court recognized the need for current information regarding the required nexus and
6 on February 15 ordered the Receiver to provide his best assessment of the manner and extent to
7 which overcrowding is *currently* interfering with the Receiver's ability to remedy the
8 constitutional violations. The Receiver's report does not conclude that a population cap is
9 needed. The Receiver states: "those who believe that the challenges faced by the Plan of Action
10 are uncomplicated and who think that population controls will solve California's prison health
11 care problems, are simply wrong." (Receiver's Report re Overcrowding at 42-43.)

12 When considering the nexus between population and medical care, this Court cannot make
13 a referral to a three-judge panel *unless* that panel could order relief that would clearly assist the
14 Receiver in the delivery of constitutional medical care. The State and the Receiver are already
15 making great progress to address prison overcrowding and to provide constitutional medical care
16 to inmates. A prison population-cap order could not provide the comprehensive reform that the
17 State and the Receiver are already implementing. Referral to a three-judge panel will not provide
18 immediate overcrowding relief, and an order issued by a three-judge panel could not ensure
19 efficient management, adequate medical care, or public safety. A far better course is to allow the
20 State and the Receiver to implement their comprehensive reform plans.

21 **The Specific Questions Posed to Defendants.**

22 In addition to directing the Receiver to provide up-to-date information, this Court also
23 directed the State to provide current information regarding the specific measures being taken to
24 alleviate overcrowding. This Court asked the State to identify:

25 (1) each specific, concrete measure the State has taken, is taking, or is planning to take,
26 that is expected to result in a reduction in the number of inmates confined in state prisons by
27 March 1, 2008 (in roughly one year), and by March 1, 2009 (in roughly two years), and the
28 amount of the reduction expected to result from each such measure by March 1, 2008, and March

1, 2009, respectively. With respect to the transfer of inmates to out-of-state institutions, the report shall also identify the number of inmates confined in out-of-state facilities as of the date of the report;

(2) at what point in time the Governor estimates he will be able to rescind the October 2006 "Prison Overcrowding State of Emergency Proclamation" and the basis for this estimate; and

(3) the total population of inmates confined by the CDCR as of the date of the Report.¹

RESPONSES TO THE COURT'S SPECIFIC QUESTIONS

1. The State Is Taking Immediate and Dramatic Steps to Reduce Overcrowding, Including Transferring Inmates Out of State, Changing Parole Policies, Implementing Rehabilitation Programs to Reduce Recidivism, Building New Prison Space, and Appointing Management Strike Teams to Implement These Efforts.

The State is working on many fronts to reduce overcrowding in California's prisons. As an initial matter, CDCR will pursue all in-state private beds, and will transfer inmates to those private beds to the extent they are available. (Kernan Decl., ¶ 7.) And beginning in June 2007, CDCR will resume transferring inmates to out-of-state private prison facilities. It is expected that CDCR will process up to 400 inmates per month for transfer out of state, and that approximately 8,000 inmates will be transferred by March 2009. (Kernan Decl., ¶ 7.) Transfers will continue thereafter as needed, as AB 900 authorizes transfers until July 1, 2011. In addition, the State will expedite construction of all AB 900 Phase I beds, as described below. Expediting construction will include waiving state laws, as needed, under the Governor's Emergency Proclamation. (Hysen Decl., ¶ 9.) It is expected that construction of 12,000 Phase I in-fill beds will be completed in 2009. (Hysen Decl., ¶ 7.)

CDCR is also making administrative changes to its parole policies, which will reduce overcrowding. In addition, CDCR will implement new rehabilitation programs that will reduce recidivism, again reducing overcrowding. Finally, to ensure that these reform measures are implemented aggressively and efficiently, two new managerial strike teams have been

¹ In addition to directing the State to respond to these questions, the Court's February 15th Order also authorized the parties to file a supplemental reply no later than Tuesday, May 29, 2007, which the State intends to do.

1 established. (Petersilia Decl., ¶ 1; Hysen Decl., ¶ 2.) The Rehabilitation Strike Team will be
2 offering suggested program improvements within the first 60 days, concluding with
3 recommendations within 9 months. (Petersilia Decl., ¶ 3; Jett Decl., ¶ 5.)

4 **A. General Provisions of Assembly Bill 900.**

5 On May 3, 2007, Governor Schwarzenegger signed AB 900 into law. AB 900 will
6 immediately reduce prison overcrowding by providing for additional inmate transfers to private
7 out-of-state prison facilities. In addition, AB 900 will further address prison overcrowding by
8 authorizing construction of in-fill beds, establishing more community re-entry beds, and creating
9 more medical and mental health beds. The medical beds will directly support the Receiver's
10 efforts, and the entire comprehensive plan will quickly reduce, and eventually eliminate, the
11 thousands of "non-traditional beds" that currently fill common areas such as gymnasiums, day
12 rooms, and program rooms.

13 Phase I of AB 900 provides for 7,484 in-fill beds at existing enumerated prisons, plus an
14 additional 4,516 in-fill beds once site assessments have been done for other facilities, for a total
15 of 12,000 Phase I in-fill beds. (Hysen Decl., ¶ 6.) AB 900 specifies that the purpose of the in-fill
16 beds is to replace the non-traditional beds currently in use. Phase I also provides for 6,000 re-
17 entry beds and 6,000 medical, dental, and mental health beds. (Hysen Decl., ¶ 6.) The
18 construction of all Phase I beds will total 24,000 beds.

19 Phase II of AB 900 provides for an additional 4,000 in-fill beds; 2,000 medical, dental,
20 and mental health beds; and 10,000 re-entry beds. The construction of all Phase II beds will total
21 16,000 beds. (Hysen Decl., ¶ 6.) However, AB 900 specifies that funds for Phase II construction
22 shall not be released unless specific enumerated progress in construction, rehabilitation programs,
23 management planning, and parole review has been confirmed by a panel consisting of the State
24 Auditor, the Inspector General and an appointee of the Judicial Council of California. AB 900
25 also provides for construction of approximately 13,000 county jail beds. (Kernan Decl., ¶ 4.)

26 AB 900 ties prison bed construction to rehabilitation, requiring that each new bed have
27 appropriate programming for inmates, including education, vocational programs, substance abuse
28 treatment programs, employment programs, and pre-release planning. These programs will

1 address overcrowding by reducing the recidivism rate. As Joan Petersilia's declaration
2 establishes, California currently has one of the highest recidivism rates in the nation. (Petersilia
3 Decl., ¶ 5, 6.) Such recidivism increases overcrowding in California's prisons. The
4 Rehabilitation Strike Team expects to reduce recidivism by 10%, which would eliminate 8,100
5 prison returns in a single year. (Petersilia Decl., ¶ 9.)

6 AB 900 also requires CDCR to develop and implement, by January 15, 2008, a plan to
7 address management deficiencies within the department. Among other things, the plan must
8 address (1) filling vacancies in management positions, (2) improving accountability, (3)
9 standardizing processes to improve management, (4) improving communications within the
10 Department, and (5) developing and implementing more comprehensive plans for management of
11 the prison and parole populations. AB 900 authorizes CDCR to contract with outside
12 management experts to assist in identifying and addressing deficiencies.

13 **B. Expert Strike Teams Will Improve Prison Management and Ensure**
14 **Expedited Implementation of AB 900.**

15 In addition to the management assessment and plan required by AB 900, Governor
16 Schwarzenegger has already established two expert strike teams to ensure that California's
17 prisons are managed effectively and that bed construction and rehabilitation programs are
18 implemented expeditiously. The Facilities Construction Strike Team will restore CDCR's major
19 project management capability and will work to expedite in-fill, re-entry, medical/dental/mental-
20 health, and jail beds authorized by AB 900. (Hysen Decl., ¶ 5.) The Facilities Construction
21 Strike Team will, among other things, (1) consider all available options for housing inmates and
22 improving inmate housing, (2) evaluate alternative construction methods, (3) work to overcome
23 impediments to expedited construction, and (4) work with local communities impacted by prison
24 facilities. (Hysen Decl., ¶ 11.)

25 At the same time, the Rehabilitation Strike Team will provide expertise on rehabilitation
26 and will expedite implementation of the rehabilitation programs, which will increase successful
27 community re-entry and reduce recidivism. In addition, the Rehabilitation Strike Team will (1)
28 assess existing CDCR rehabilitation programs and space, (2) design an integrated rehabilitation

1 services delivery plan for inmates and parolees including substance abuse treatment, education,
2 job training, counseling, and life skills; and develop a plan for inmate job training, (3) quickly
3 implement inmate intake and pre-release needs assessment tools, (4) develop incentives for
4 program participation; (5) develop a plan to immediately reduce the number of lockdown days so
5 that inmates can participate in rehabilitative programming; and (6) develop the \$50 million in
6 rehabilitation and treatment funds that are authorized by AB 900. (Petersilia Decl., ¶ 3; Jett
7 Decl., ¶ 3.) The strike teams are composed of numerous experts from universities, community
8 organizations, and state government. (Petersilia Decl., ¶ 4; Hysen Decl., ¶ 5.)

9 **C. Specific Details Regarding Implementation of AB 900 and Other State**
10 **Efforts to Reduce Prison Overcrowding.**

11 **i. Out-of-State Transfers.**

12 In order to immediately reduce overcrowding in California prisons statewide, CDCR will
13 initiate additional inmate transfers to out-of-state facilities starting in June 2007 under AB 900
14 and the Governor's Emergency Proclamation. (Kernan Decl., ¶ 7.) CDCR will initially transfer
15 up to 300 inmates per month for the first four months, and then increase the transfers to 400
16 inmates per month. It is anticipated that this rate of transfer will continue through the end of
17 fiscal year 2007/2008. Under this plan, 5,060 inmates will be transferred to out-of-state facilities
18 by the end of June 2008, and 8,000 inmates will be transferred by March 2009. (Kernan Decl., ¶
19 7.) After that, transfers may continue as needed, as AB 900 authorizes continued transfers until
20 July 1, 2011.

21 These out-of-state transfers will reduce the number of non-traditional beds from
22 approximately 18,000 to approximately 13,000 by the end of the 2007/2008 fiscal year. (Kernan
23 Decl., ¶ 7.) CDCR will pursue all in-state transfer opportunities before initiating out-of-state
24 transfers to the extent possible. (Kernan Decl., ¶ 7.) Inmates selected for transfer to out-of-state
25 facilities will undergo a comprehensive medical screening. (Kernan Decl., ¶ 11.) Only those
26 inmates who meet the Receiver's medical criteria will be selected for transfer. Transferring
27 inmates out of state will reduce overcrowding, which in turn will decrease the risk of violence and
28 the spread of infectious disease. Additionally, these transfers will result in reduced staffing

1 requirements; for example, escort officers and medical staff will be better able to serve a smaller
2 population. (Kernan Decl., ¶ 11.) The transfers will also free space at existing facilities for
3 enhanced medical services. Medical staff will be able to focus on non-emergent services, because
4 reducing prison overcrowding, and in particular the use of non-traditional beds, will ease prison
5 living environments and decrease violence and the spread of infectious diseases. (Kernan Decl., ¶
6 11.)

7 As a sub-part of its first question, the Court asked the State to identify the current number
8 of inmates who are currently housed in out-of-state private prison facilities. There are currently
9 360 inmates housed out of state. Each of these inmates voluntarily transferred to an out-of-state
10 facility, and each was pre-screened in compliance with standards established by the Receiver's
11 Office to ensure that the inmate was appropriate for transfer. (Kernan Decl., ¶ 11.)

12 **ii. In-Fill Beds.**

13 AB 900 will also reduce prison overcrowding by authorizing the construction of 16,000
14 in-fill beds. (Hysen Decl., ¶ 6.) In-fill beds will provide additional capacity at existing prisons in
15 a way that ensures proper facilities, support, and services. (Hysen Decl., ¶ 6.) Creating in-fill
16 beds will not require the construction of new prisons; rather, there will be construction of new
17 facilities at existing prisons. (Kernan Decl., ¶ 12.) In-fill beds, like the out-of-state transfer of
18 inmates, will eliminate non-traditional beds and provide better care and services for inmates.

19 The Facilities Construction Strike Team will expedite construction. (Hysen Decl., ¶ 6.)
20 As required by AB 900, these beds will be constructed so as to fully integrate rehabilitative
21 programs into the new facilities. (Hysen Decl., ¶ 6.) The Facilities Construction Strike Team
22 will work to finish construction as quickly as possible, but at a minimum it is expected that
23 construction of the 12,000 Phase I in-fill beds will be completed in 2009. (Hysen Decl., ¶ 6.) As
24 new in-fill beds are constructed, AB 900 mandates the reduction in a proportionate number of
25 non-traditional beds, until non-traditional bed use is entirely eliminated. (Kernan Decl., ¶ 12.)

26 **iii. Re-Entry Beds.**

27 AB 900 also provides for the creation of 16,000 re-entry beds, which are beds in small,
28 secured facilities (500 inmates maximum per facility), that are operated by CDCR but are

1 geographically closer to communities and are focused on providing rehabilitation services and
2 preparing inmates for re-entry into society. (Kernan Decl., ¶ 13.) Again, the Facilities
3 Construction Strike Team will expedite construction to provide 6,000 Phase I re-entry beds.
4 (Hysen Decl., ¶ 8.)

5 **iv. Medical and Mental Health Beds.**

6 The addition of medical and mental health beds is also provided for by AB 900. A total of
7 8,000 medical/mental health beds will be created. Again, the Facilities Construction Strike Team
8 will expedite construction and will work to bring the beds on line as soon as possible. (Hysen
9 Decl., ¶ 9.) Based on the scope of the *Plata* Receivership, construction of the AB 900 medical
10 beds will require the cooperation of the Receiver. (Kernan Decl., ¶ 14.)

11 **D. Administrative Parole Changes.**

12 Parole reform strategies will also play a large role in the reduction of prison overcrowding
13 and the provision of constitutional medical care. In addition to the implementation of AB 900,
14 CDCR has implemented immediate parole changes to reward successful rehabilitation. (Kernan
15 Decl., ¶¶ 15-19.) CDCR is actively pursuing strategies to release parolees from their statutory
16 parole periods as soon as is appropriate. (Kernan Decl., ¶¶ 17, 21.)

17 Under current California law, parolees initially released from prison after serving a period
18 of incarceration for a non-violent offense (a conviction not delineated in Penal Code Section
19 667.5(c)), and who have complied with the terms of their parole continuously for one year since
20 their release, shall be discharged on the 30th day after their first year of parole (or at the 13th
21 month of their parole term), unless the recommendation to retain them on parole has been made
22 to, and approved by, the Board of Parole Hearings. (Cal. Penal Code § 3001.) Similarly, parolees
23 initially released from prison after serving a period of incarceration for a violent offense (as
24 defined by Penal Code Section 667.5(c)) and who have complied with the terms of their parole
25 continuously for two years since their release, shall be discharged the 30th day after their second
26 year of parole (or at the 25th month of their parole term), unless the recommendation to retain has
27 been made to, and approved by, the Board of Parole Hearings. (Kernan Decl., ¶ 17.)
28

1 Prior practice within the Division of Adult Parole Operation (DAPO) resulted in fewer
2 parolees being discharged from parole at the 13th and 25th months than is allowed by California
3 Penal Code Section 3001. In order to ensure compliance with Penal Code Section 3001, DAPO
4 issued a memorandum clarifying when parolees must be released from parole under state law.
5 (Kernan Decl., ¶¶ 17, 21, Ex. B.) Specifically, parolees initially released from prison after
6 serving a period of incarceration for a non-violent offense, described as a conviction not noted in
7 Penal Code Section 667.5(c), and who have been on parole continuously for one year since their
8 release, shall be discharged the 30th day after their first year, unless the recommendation to retain
9 has been made to, and approved by, the Board of Parole Hearings. (Kernan Decl., ¶¶ 17, 21, Ex.
10 B.) Additionally, parolees initially released from prison after serving a period of incarceration for
11 a violent offense, as defined by Penal Code Section 667.5, and who have been on parole
12 continuously for two years since their release, shall be discharged the 30th day after their second
13 year, unless the recommendation to retain has been made to, and approved by the BPH. (Kernan
14 Decl., ¶¶ 17, 21, Ex. B.)

15 Historically, DAPO discharged approximately 13,800 parolees annually at the 13th
16 month, and 5,000 at the 25th month. Based on the revised practice, it is anticipated that there will
17 be an additional discharge of between 2,000 and 4,000 parolees from parole in the next 12
18 months. (Kernan Decl., ¶ 17.) By discharging more parolees from supervision, CDCR expects to
19 experience a reduction in the number of parolees returned to custody for various parole violations.

20 Further, the Division of Adult Parole Operations (DAPO) implemented a risk and needs
21 assessment tool in each of the 33 institutions: the Correctional Offender Management Profiling
22 for Alternative Sanctions (COMPAS). A study is currently being conducted to evaluate the
23 predictive validity of COMPAS in terms of its ability to effectively identify key risk and needs
24 factors in the parole population. Additionally, DAPO has undertaken extensive research into the
25 use and effectiveness of a parole-violation decision-making matrix with the support of corrections
26 expert Dr. Joan Petersilia and other topic area experts. This tool has been shown to improve
27 organizational decision-making consistency, as well as help to establish a culture of determining
28 sanctions based on policy-driven rationale and then tailoring the sanction to the specific risk and

1 needs of the parolee. When supported by evidence-based programs, such as COMPAS, this type
2 of matrix has been proven to play a meaningful role in the overall reduction of recidivism rates
3 among the parolee population. DAPO anticipates that a decision-making matrix will be ready for
4 a pilot deployment by the end of 2007. Once implemented, these tools will result in even more
5 discharges from parole.

6 **2. The Emergency Proclamation for Prison Overcrowding Can Be Rescinded in**
7 **2009, When Out-of-State Transfers, AB 900 Implementation, and Parole Changes**
8 **Will Eliminate the Emergency Conditions Caused By Non-Traditional Beds.**

9 The Governor issued an Emergency Proclamation to address the peril to persons and
10 property caused by the non-traditional beds used in 29 California prisons. (See Gov. Code, §§
11 8558, 8571.) Government Code section 8567(b) provides that orders issued during an emergency
12 shall be of no further effect when the emergency ends. In addition, the Legislature can vote to
13 terminate an Emergency Proclamation.

14 Based on CDCR's current plan for continued out-of-state transfers, AB 900
15 implementation, and administrative parole changes, it is expected that the emergency conditions
16 caused by non-traditional beds will likely be eliminated in 2009. (Kernan Decl., ¶ 23.) When the
17 emergency conditions are eliminated, the Emergency Proclamation will be rescinded.

18 **3. Although the Current Prison Population Exceeds 174,000 Inmates, the State's**
19 **Prison Reform Plans Will Dramatically Reduce Overcrowding and Assist the**
20 **Receiver in Providing a Constitutional Level of Medical Care.**

21 Approximately 162,848 male and 12,141 female inmates are currently housed by CDCR,
22 for a total prison population of approximately 174,989 inmates. (Kernan Decl., ¶ 4.) As stated in
23 paragraph 5 above, CDCR anticipates housing--in California prisons--164,599 male inmates in
24 March 2008, and 167,614 male inmates in March 2009. These figures, however, do not account
25 for the impact that the anticipated out-of-state transfers and the DAPO May 15, 2007
26 Memorandum clarifying Penal Code section 3001 administrative discharge will have on the male
27 prison population. Taking these two factors into account, it is estimated that CDCR will house
28 in-state approximately 159,939 male inmates in March 2008, and 162,674 male inmates in March
2009. (Kernan Decl., ¶ 22.) These population projections do not take into account the additional
parole reduction strategies discussed above, such as alternative programming, the COMPAS risk

1 and needs assessment tool, the decision-making matrix, and alternative sanctions programs,
2 which are expected to further decrease CDCR's in-state male prison population.

3 **CONCLUSION**

4 As demonstrated in this report, the State is launching an aggressive and comprehensive
5 plan to reduce overcrowding in California's prisons. AB 900 provides for out-of-state transfers,
6 thousands of beds including medical beds, and better rehabilitation programs to reduce
7 recidivism. Expert strike teams have been established to expedite implementation and ensure
8 effective prison management. Administrative parole changes have been implemented to further
9 reduce overcrowding. In addition, the Receiver reports great progress in the past year, and has
10 just issued his Plan of Action to provide a constitutional level of medical care. Nothing supports
11 Plaintiffs' contention that the Receiver will fail; rather, the Governor's administration and the
12 Receiver will work to implement their respective plans. Accordingly, referral to a three-judge
13 panel is premature.

14 DATED: May 16, 2007

HANSON BRIDGETT MARCUS
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15
16 By: /s/
17 PAUL B. MELLO
18 Attorneys for Defendants

19 DATED: May 16, 2007

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **MARCIANO PLATA, et al. v. ARNOLD SCHWARZENEGGER, et al.**

No.: **C 01-1351 TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **May 16, 2007**, I served the attached

**DEFENDANTS' REPORT IN RESPONSE TO THE COURT'S
FEBRUARY 15, 2007 ORDER**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 16, 2007**, at San Francisco, California.

J. Tucay

Declarant

J. Tucay
Signature